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HOUSE OF REPRESENTATIVES

REPORT
99-548

COMPLETED

EXEMPTING RURAL WATER SYSTEMS FACILITIES ASSISTED UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AS AMENDED FROM CERTAIN RIGHT-OF-WAY RENTAL PAYMENTS UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

APRIL 21, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 3617]

The Committee on Interior on Insular Affairs, to whom was referred the bill (H.R. 3617) to exempt rural water systems facilities assisted under the Consolidated Farm and Rural Development Act as amended from certain right-of-way rental payments under the Federal Land Policy and Management Act of 1976, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 2, line 1, after the word "facilities" insert the following:

> operated by nonprofit associations or nonprofit corporations not themselves under the control or ownership of profitmaking corporations or business enterprises and.

PURPOSE

As reported, this bill would exempt from certain rental payments (for rights-of-way across certain Federal lands) rural water systems receiving federal financial assistance under the Consolidated Farm and Rural Development Act.

BACKGROUND AND NEED

Section 504 of the Federal Land Policy and Management Act of 1976 (FLPMA) establishes terms and conditions governing rights-of-way across Federal lands managed by the Bureau of Land Manage-

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ment in the Department of the Interior and the U.S. Forest Service in the Department of Agriculture. Subsection (g) of that Section provides that the holder of such a right-of-way shall pay annually in advance the fair market value of the right-of-way, but gives the concerned Secretary authority to waive the rental fee in the case of "nonprofit associations or nonprofit corporations . . . or to a holder where he provides without or at reduced charges a valuable benefit to the public."

In recent years, however, the land-managing agencies evidently have adopted a general policy of not waiving rental fees. In the 98th Congress, the law was amended to explicitly exempt from these rental fees rights-of-way for rural electric and telephone lines financed through the Rural Electrification Act. H.R. 3617 would similarly exempt from rental fees rights-of-way used by rural water and sewer facilities financed pursuant to the Consolidated Farm and Rural Water Development Act and operated by nonprofit associations or corporations.

THE COMMITTEE AMENDMENT

The Committee adopted an amendment to make clear that the exemption from rental fees under the terms of the bill would extend only to qualifying systems operated by nonprofit associations or corporations.

SECTION-BY-SECTION ANALYSIS

Section 1 of the reported bill provides a short title, namely the "Rural Water Right-of-Way Policy Act of 1985".

Section 2 amends Subsection (g) of Section 504 of the Federal Land Policy and Management Act of 1976 by adding at the end thereof a sentence which would exempt from the requirement of annual rental fees rights-of-way for rural water and sewer facilities operated by nonprofit associations or nonprofit corporations not themselves under the control or ownership of profitmaking corporations or business enterprises and financed pursuant to the Consolidated Farm and Rural Development Act as amended. The exemption would not preclude the appropriate Secretary from requiring the reimbursement of reasonable administrative and other costs associated with the grant, issuance, or renewal of a right-of-way.

OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs will have continuing responsibility for oversight of the implementation of this bill after its enactment. No reports or recommendations were received by the Committee pursuant to Rule X, clause 2(b)(2) of the Rules of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(2) of rule XI of the Rules of the House of Representatives, the Committee finds that enactment of H.R. 3617 will have no inflationary impact on the national economy.

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COST AND BUDGET ACT COMPLIANCE

In the opinion of the Committee, enactment of H.R. 3617 will not involve significant costs. No estimate was received from the Congressional Budget Office prior to the filing of this report.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

H.R. 3617 was introduced by Representative English on October 24, 1985. On March 6, 1986, the Subcommittee on Public Lands held a hearing on the bill and on April 16, 1986, adopted an amendment and favorably referred the bill as so amended to the full Committee. On April 16, 1986, the Committee on Interior and Insular Affairs adopted an amendment and ordered the bill as so amended favorably reported to the House by a voice vote.

DEPARTMENTAL REPORT

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, March 17, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on HR. 3617, a bill "To exempt rural water systems facilities assisted under the Consolidated Farm and Rural Development Act as amended from certain right-of-way rental payments under the Federal Land Policy and Management Act of 1976."

The Department of Agriculture (USDA) recommends that H.R. 3617 not be enacted.

H.R. 3617, entitled the "Rural Water Right-of-Way Policy Act of 1985," would amend section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1764, as amended) to add a sentence to the section to require the Secretaries of Agriculture and of the Interior to grant, issue, or renew, without charge, rights-of-way on National Forest System or public lands for rural water and sewage financed under the provisions of the Consolidated Farm and Rural Development Act, as amended. The bill would allow the Secretaries to continue the present authority requiring applicants for rights-of-way to pay reasonble administrative and other costs incurred in processing an application and for inspection and monitoring the right-of-way. The authority that would be amended now requires a holder of a right-of-way to pay annually in advance the fair market value for use of the right-of-way on National Forest System or public lands. It also authorizes the Secretaries, when equitable and in the public interest, to waive payment of the annual fee if the holder of the right-of-way grants a right-of-way to the United States under a cooperative cost-share program, if the holder is a State or local government entity or nonprofit organization, or if the holder provides a valuable benefit to the public or the programs of the Secretaries. Pursuant to regulations implemented in 1980, waivers are not authorized for municipal utilities and cooperatives whose principal source of revenue from the authorized use is customer charges.

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The Federal Service administers 9,694 water use authorizations (permits) on National Forest System lands. Of these, 5,950 have a fee charged. There are approximately 147,000 loans outstanding under the Consolidated Farm and Rural Development Act, of which about 12 percent are related to water use. If this percentage were applied to right-of-way holders, 714 holders would be affected by this legislation. Based on an average fee of $73.70 per charge permit, the loss of revenues to the Federal Government would be about $52,622 annually. In addition, the administration of this fee exemption legislation would increase administrative burden and costs on both the permittee and the Forest Service. The permittee would have to provide proof that the water or sewer facility is financed by a USDA loan and the agency would have to determine whether the loan applies to the improvement in question.

We believe the legislation would create an inequity among the right-of-way permittees. There is adequate authority under the provisions of FLPMA to waive fees under certain circumstances when it is in the public interest. However, the blanket annual fee exemption proposed by this legislation would be applicable to eligible USDA loan holders. The Federal land manager would not have any flexibility in administering these permits which would result in unequal treatment to other permit holders. Some permittees are commercial operators who provide water to the ultimate user in direct competition with other companies that provide such service. It is possible that some of these companies are holders of USDA loans, and thus would receive a subsidy that would give that company a financial advantage over another. This advantage would be in addition to that provided by the USDA loan. This would apply to individuals as well.

The legislation would create an undesirable precedent, leading other persons or organizations holding permits to use National Forest system lands to seek similar treatment. It could be argued that the existence of any federally-sponsored aid should be cause for exemption. This could lead to the situation where section 504(g) of FLPMA, requiring permittees to pay a reasonable rental fee, would be rendered meaningless.

We understand that the introduction of this legislation was prompted by three water districts in southeastern Oklahoma. While the bill would exempt them from paying their annual fees, which were established for the first time in 1985, and are $82.88, $192.85, and $94.33, respectively, we believe the bill would apply to a much larger number of permittees.

It is in the interest of fairness among permittees and the appropriateness of charging a fee for those who use the resources of the National Forest System in a manner not available to the general public that we recommend that the provisions of section 504(g) of FLPMA be maintained and that this bill should not be enacted.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD E. LYNG, *Secretary.*

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